



Health Benefit Exchange Authority Executive Board Meeting

MINUTES

Date: Wednesday, September 11, 2019
Time: 5:30 PM
Location: By Conference Call Only
Call- in Number: 1-650-479-3208; access code: 730 599 017

Members Present: Henry Aaron, Leighton Ku, Diane Lewis, LaQuandra Nesbitt, Khalid Pitts, Stephen Taylor, Tamara Watkins, Laura Zeilinger

Members Absent: Wayne Turnage

I. Welcome, Opening Remarks and Roll Call, Diane Lewis, Chair

A roll call of members confirmed that there was a quorum with four voting members present (Dr. Aaron, Dr. Ku, Ms. Lewis, Mr. Pitts).

II. Approval of Agenda, Diane Lewis, Chair

It was moved and seconded to approve the draft agenda. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

III. Approval of Minutes, Diane Lewis, Chair

It was moved and seconded to approve the minutes of July 18th, 2019. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, and Mr. Pitts voting yes.

IV. Annual Board Officer Elections

- a. Nominations and Votes for Chair, Vice-Chair, Secretary-Treasurer of Executive Board

Ms. Lewis stated that the board voted at the July 18th board meeting to hold Annual Executive Board Officer Elections on September 11, 2018, consistent with the HBX Executive Board by-laws. The positions that will be voted on today are:

Chair

Ms. Lewis turned to Purvee Kempf, General Counsel & Chief Policy Advisor, to conduct the elections.

Ms. Kempf said that the bylaws allow for any HBX voting board member to make nominations, including nominating themselves. Non-voting members are permitted to make nominations of voting board members. In order to be considered for the vote, a nominated voting member must accept the nomination. Once all nominations and declinations for a position are complete, there will be vote for each position. Elections for each officer shall be made by majority vote. Abstentions are not permitted.

Ms. Kempf called for nominations for the Chair position. Khalid Pitts nominated Diane Lewis. Leighton Ku seconded the nomination. Ms. Kempf stated that since there is only one nominee and abstentions are not permitted, the vote will be recorded as a unanimous one in favor of Ms. Lewis.

Ms. Kempf called for nominations for the Vice-Chair position. Khalid Pitts nominated Henry Aaron. Leighton Ku seconded the nomination. Ms. Kempf stated that since there is only one nominee and abstentions are not permitted, the vote will be recorded as a unanimous one in favor of Dr. Aaron.

Regular Board business was suspended temporarily as Ms. Lewis introduced the Mayor of the District of Columbia, Honorable Muriel Bowser, and welcomed her to the meeting. Ms. Lewis reviewed the Mayor's support of the ACA, her participation at open enrollment events, and her sponsorship of major legislation such as limits on short term health plans and association health plans. She also noted that the Mayor has written opposition letters to proposed Federal rules that undermine the ACA.

Mayor Bowser thanked HBX for inviting her to the board meeting and for Board members' service; she noted that she was on the Council for the formation of HBX. She appreciated all that the Board and staff do for the residents of the District and was glad to have an opportunity to talk to the Board and staff. She also welcomed Dr. Nesbitt to the board meeting as she'd arrived a few minutes late.

The Mayor said she was on a "summer deep dive" this year checking in on independent agencies, seeking information on how she can help and what the agency needs. She also discussed her appointment responsibilities, which extend to some 1800 positions to Boards and Commissions throughout the District government. She identified Steve Walker as our contact.

The Mayor said that the effectiveness of the exchange is important for the District and the image we project to Congress. When we can demonstrate that our agencies are more effective than

others across the country, it is a source of pride for the District and is important to our residents and businesses.

The Mayor said that she was proud of our work that has helped the District reduce the number of uninsured residents in the District. She said that we are always looking for ways to translate the tremendous amount of coverage we have to better outcomes for DC residents. She has empaneled a Health Systems Transformation Commission, including all major hospital providers, insurance companies, and nonprofits that work with District residents. The Commission is working to:

- Make sure emergency rooms and emergency services are used as they should and that capacity across the city is effective and sufficient;
- Identify areas that are lacking in care, such as access to specialists.

The Mayor said that insurance is at the heart of this activity. We have been fighting the fight as the ACA is under attack. The District is committed to continue to improve on the ACA.

The Mayor thanked Ms. Kofman for her participation in her quarterly Cabinet meetings. She opened the session to questions and comments.

Mr. Pitts thanked Mayor for work she has done for small businesses and access to capital, and for standing up to protect HBX against attacks on ACA.

Mr. Pitts noted that last year there had been much debate about wages in the hospitality community. During that, we also heard about access to healthcare from hospitality workers. Mr. Pitts noted that association health plans had targeted hospitality workers, and he especially thanked the Mayor for fighting against association health plans which could leave restaurant workers with inadequate protections.

Mr. Pitts said that anecdotally, he knows that hospitality industry employers are not taking advantage of the availability of healthcare coverage for their workers. He would like to confer with the Mayor's staff to discuss two things: How to convince more employers to offer it and, for the employee side, to address their concerns about costs.

The Mayor said she thought that we may know more about District residents than surrounding regions, so a wider study might be more useful to consider since the employees for District restaurants and other small businesses come from the surrounding states as well.

Dr. Aaron noted for the Mayor that HBX has limited number of insurers. He suggested that any help the Mayor can offer in facilitating the maintenance of a healthy marketplace, making sure that the existing insurers remain, and encouraging others to join since every carrier counts, would be greatly appreciated and valuable.

Ms. Lewis recognized that Ms. Watkins had joined the meeting by telephone.

The Mayor thanked HBX for the opportunity to address the Board and staff. She left the meeting and the regular agenda resumed.

Ms. Kempf called for nominations for the Secretary/Treasurer position. Ms. Lewis nominated Khalid Pitts. Henry Aaron seconded the nomination. Ms. Kempf stated that since there is only one nominee and abstentions are not permitted, the vote will be recorded as a unanimous one in favor of Mr. Pitts.

Since Ms. Kofman had stepped out of the room, Ms. Lewis called on Dr. Aaron to deliver the report of the Finance Committee.

V. Finance Committee Report, Henry Aaron, Chair

The Finance Committee met on September 5th via conference call with Diane, Tamara and I present. There was no August Finance Committee meeting.

PUBLIC CHARGE UPDATE: As Mila discussed in her Executive Director report, the Trump Administration finalized the Department of Homeland Security Public Charge Rule on August 14th, 2019. Soon after that, she reached out to the Finance Committee for authorization for up to \$500,000 in additional HBX spending to combat the chilling effect this new rule is expected to have on legal immigrants seeking health coverage through DC Health Link. She noted that these funds would be used to supplement the existing outreach and grants budgets as needed to ensure that legal immigrants receive free help at enrollment events from immigration attorneys as well as a targeted outreach and media strategy to reach impacted populations. The Finance Committee approved this request. As Mila also noted, we've since learned that the Mayor's Immigration Justice Legal Services Grants will cover this type of assistance at DC Health Link One Touch Events. That is terrific, but based on this approval of HBX funds, HBX will be able to pursue additional grant giving, if necessary, for this critical need.

PROCUREMENT: The Finance Committee approved a new contract with four option years for Consumer Checkbook, Center for Study of Services (CSS). CSS is a District non-profit that has worked with us since 2013 to develop and maintain our award-winning consumer decision support tools on the DCHealthLink.com website. Mila will discuss this in more detail when it comes up on the agenda later this evening, so I will leave that to her.

INVESTMENT PORTFOLIO: CFO Marjorie Edmonds confirmed that the Treasury investment that matured August 15th was reinvested in the Government Money Market fund. The Finance Committee concurred with the DC Treasury recommendation that the funds be kept there, rather than reinvested in new Treasury notes, as the money market yield is higher than Treasury notes. Marjorie will keep in close touch with Treasury and the funds will be reinvested in Treasury notes when that becomes financially advantageous.

ASSESSMENT UPDATE: Assessments were due on August 19th and we have collected \$28.6 M of the \$30.5 million due. That leaves approximately \$1.8 million outstanding – which comes

from 22 companies, though the almost \$1.4 of it is from one company. Reminder letters were recently sent by DISB to all of these companies. With regard to appeals, there were 14 appeals filed in a timely manner totaling \$670,000. As of our meeting, one refund had been issued totaling \$11,691, with the rest still undergoing review.

FY 21 BUDGET: HBX Staff have begun the FY 21 budget process. As a reminder for us, that process is first an internal staff process, then it is brought to the Finance Committee in October for our input. After that, HBX staff will take the FY 21 Proposed Budget to the Standing Advisory Board for their review and input in a public meeting. As HBX has done in the past, a meeting with advocates is also planned to receive their input prior to the proposal coming to the HBX Executive Board at our November 13th, 2019 Executive Board Meeting. Once we've approved it, it moves into the Mayoral and Council process.

NEW FTES: Executive Director Kofman explained that that agency has increased FTE authority by eight FTEs under existing budget authority and plans to move forward with making these new FTEs permanent in the upcoming FY 21 budget planning process. This will bring the FTE count to 109 for HBX. These positions are mainly in IT and MIPO case managers.

IT BUDGET REVIEW: Executive Director Kofman reviewed ongoing IT Development projects with us. Most on our list for FY 19 are completed. We initiated our planned FY 20 development early because of that. That work is ongoing and funds dedicated to that IT development will be rolled over into our FY 20 budget.

FINANCIAL REVIEW: The Finance Committee reviewed the monthly budget and spending report, and the purchase order report and addendum to the purchase order report and found nothing of concern.

VI. Executive Director Report, Mila Kofman, Executive Director

UNINSURED RATE: Ms. Kofman noted that per a census released yesterday, the uninsured rate went from 3.8% to 3.2%. We are second lowest in the nation. Our strong outreach efforts, with the support of the Mayor and sister agencies, contribute to the decrease.

GETTING READY FOR OPEN ENROLLMENT:

- **CCIO readiness review:** This is a part of federal oversight of state-based marketplaces and is required annually before OE begins to ensure that each SBM is ready for OE. Our review is scheduled for September 13 and we do not anticipate any issues.
- Open enrollment starts November 1 and ends January 31 for individuals and families. We are in the middle of planning OE outreach and enrollment events. Once we have finalized our November 1 events, we will update you.
 - This year, because of the final public charge rule, we are also adding additional targeted outreach and enrollment efforts for people directly and indirectly impacted.

This outreach includes a targeted paid media campaign. We will also have immigration lawyers at enrollment events.

- **We have revamped our Navigator/Assister program:** HBX staff have been meeting with each organization to find ways to be more strategic with limited resources. Assister annual refresher training is October 1st and 2nd and this year we have added a two-day training focused on health insurance literacy and that is scheduled for September 25-26.
- **Required Notices:** Our customers who get APTC will be receiving the required eligibility notice at the beginning of OE. The final renewal notices to all customers will go out as is customary in the middle of December.
- **DCAS:** DHCF is merging two CURAM platforms into one starting Friday evening September 13 through Monday morning September 16. The online system will not be available for Medicaid, APTC, SNAP and TANF. DC Health Link full pay individual customers and SHOP customers will not have access Friday the 13th starting at 1 a.m. until early Saturday morning if the deployment goes as planned.
- **IT updates for OE and beyond:** On August 26th, we deployed a major upgrade to our HBX IT system. As you know, the MA Health Connector for Business has invested in certain new features and more flexibility in our DC Health Link code. Our team replaced our old DC Health Link code base with the new MA code. We get new flexibility and additional features which will help us operationally. Being on the same codebase gives us more opportunities to share development and operational costs. Immediate benefits to HBX include:
 - ✓ HBX staff can now override IT rules to extend an employer's open enrollment. Employers frequently need a longer enrollment period than they initially anticipated. We used to rely on IT contractors to perform this function and now HBX staff can do it.
 - ✓ Enhanced Broker Quoting Tool (BQT) that lets brokers generate specific quotes and easily share them with clients. The BQT with expanded census data now includes coverage information for primary subscribers and their dependents under the group plan. Brokers can download the quote or share it directly with clients.
- **QHP certification:** Our plan management team is reviewing dental (19) and health plan (181) submissions.
- **2020 Premium Rates:** Rates are due to be finalized by mid-September so we should know more soon.

UPDATE ON AUTO PAY: As we previously reported, with DC Health Link Auto Pay, small businesses now have an efficient way to pay their invoice without having to reenter their bank account information every month. As of September 2, there are 832 groups signed up for Auto Pay. After a period of BETA testing to ensure that the feature works reliably, we are now launching a broad campaign to all our small business customers.

VACANCIES ON THE STANDING ADVISORY BOARD: We have two resignations from the Standing Advisory Board that need to be filled for the remaining period of their terms (both through 2022). One of these is for a health care provider and the other for a commercial sector health plan. There are also up to three openings for full terms in the qualification categories of health insurance broker, health insurance consumers, Exchange consumers, and disease and demographic-specific advocacy groups. We will be posting the vacancy announcement by next week and circulating it to board members and stakeholders to help identify potential candidates. The Board's Operations Committee will then receive recommendations from HBX staff.

DISASTER RECOVERY: District agencies were required to update their Continuity of Operations Plan (COOP) and participate in an exercise. Our agency had a real situation occur and staff had to vacate the 1225 I St. location and we executed our COOP plan. We learned a few lessons and updated the COOP plan.

FEDERAL:

CMS Health Plan Quality Rating: On August 15th, CMS announced that for plan year 2020 Open Enrollment period, quality rating information will be displayed on Healthcare.gov. Also, all SBMs are now required to display quality rating information. We have been displaying quality information for two years and DC Health Link customers have now seen this for plan years 2018 and 2019.

HBX Comments on Proposed Rules:

Non-Discrimination Rule: On June 14, 2019, HHS issued a proposed rule that would amend current nondiscrimination regulations under section 1557 of the ACA. This proposed rule would strip away key protections, including protections for members of the LGBTQ+ community, women, and individuals with limited English proficiency. HBX submitted comments opposing the proposal and urging the Administration to withdraw the proposed rule (comments [here](#)).

Draft Individual Coverage HRA Model Notice: The tri-agencies (HHS, DOL and IRS/Treasury) issued a Model Notice with the prescribed regulatory requirements for employers who offer their employees an Individual Coverage HRA. HBX submitted comments on July 22, 2019. HBX Comments suggested changes to the model notice to make the notice more helpful to workers and offered suggestions to simplify it (cover letter [here](#) and recommended edits [here](#)).

Final Regulations:

Public Charge Rule: On August 14, 2019, the Department of Homeland Security issued a Final Rule broadening the definition of "public charge" used in immigration decisions when deciding to issue a visa, renew a visa, or grant lawful permanent resident status. The Rule expands the list of public benefits that count against an applicant to include Medicaid. Even applying for APTC, because such applications are also applications for Medicaid, would be considered negatively by a DHS immigration officer.

- On August 16, DC, California, Pennsylvania, Oregon, and Maine Attorneys General filed a lawsuit in the federal court for the Northern District of California seeking to overturn the Final Rule. On August 26, these states filed a motion for preliminary injunction. HBX, DHCF, and DHS provided declarations in support of the DC AG lawsuit.

Future Proposed Federal Regulations:

DOJ Public Charge Proposed Rule: OMB received a proposed public charge rule from the Department of Justice on July 3rd. OMB is reviewing. The calendar indicates OMB meetings on it in the next week.

CONGRESSIONAL:

Surprise Medical Billing: Legislation to curtail surprise billing does not have any consensus on how to proceed. It is unclear what will happen to the legislation.

ACA bills: The House passed legislation enhancing the ACA. The House may consider affordability such as reinsurance. It is unknown whether the Senate will take up any ACA bills.

ENROLLMENT DATA: Data is available [here](#).

Ms. Lewis took a break in the agenda to recognize former Board member Nathaniel Beers. She wanted to take a moment to announce that Nathaniel Beers stepped down from the HBX Executive Board this month and to thank him for his service. Dr. Beers came to the HBX Executive Board with significant operational experience running a large organization and with experience in District government. Based on these experiences, Dr. Beers was able to provide critical insight on HBX board deliberations related to policy and operations. This shows even more in his work on the Business Operations Committee, Research and Data Analysis Committee, and, most recently, the Insurance Market Committee. Dr. Beers has been a solid working member of this Board, and Ms. Lewis thanked him for his service and regrets that he had to step down. Dr. Ku concurred, and acknowledged all the work he has done in his professional life for the children of the District. Dr. Beers acknowledged the critical role HBX plays in the health and well-being of the residents of the District.

Dr. Ku spoke about the work he has done with respect to the lawsuits against the public charge rule. His research indicates greater morbidity and mortality as a result of the rule. He noted that the affected communities, already under attack by the Administration, are quite fearful. Even when it is explained to members of the community that they should not be afraid, they are still afraid. He posited that people should think about ways to message and communicate, as the issue will drag on for some months before, he hopes, a court issues an injunction against the rule. He said we should consider what sorts of strategies are needed to reduce fear effectively. For example, immigration attorneys: feel obligated to explain to their clients why they should be afraid. Is there a better way to communicate on the issues?

Ms. Kofman concurred, saying the issue is complicated and better communication could help those who need it. She said so many negative factors; it is a catch 22. We welcome assistance from experts who understand complexity and fear, especially among different immigrant communities and help them make informed decisions.

VII. Discussion Items

a. DC Health Benefit Exchange Clean Up Legislation – Tamara Watkins, Chair, Executive Board Ad Hoc Committee on Legislation

In December of 2018, the HBX Executive Board established the Ad Hoc Executive Board Committee on HBX Legislation, comprised of myself as chair and Dr. Aaron and Mr. Pitts as the other members. The Committee was charged with reviewing the HBX enabling legislation and recommending areas of needed updates. After reviewing the HBX enabling legislation, the Committee identified three specific areas of needed updates including cleaning up references to the Affordable Care Act, updating the conflict of interest provisions applicable to HBX Board members and staff, and making permanent HBX's independent procurement authority.

At the March Board meeting, the Ad Hoc Executive Board Committee on HBX Legislation requested the HBX Standing Advisory Board for review and input on all of these areas. The HBX Standing Advisory Board (SAB) includes representatives from providers, insurance carriers, consumer advocates, small business owners, customers, brokers, and others.

The HBX SAB met five times for review and discussion. They asked for research on statutory language, other exchange marketplaces, BEGA conflict of interest provisions, and more. After discussing numerous potential changes, the SAB members voted unanimously on June 18, 2019 on the recommendations that are before us today as a resolution.

These recommendations do the following:

1. First, amend references to the ACA in the HBX enabling legislation to ensure that HBX continues as the District's state-based exchange marketplace and that, if the Affordable Care Act were repealed or invalidated, the statutory references in the Act to the ACA would not result in a loss of consumer protections or market rules in the District. A couple examples include retaining the definition of habilitative services passed in 2013 and retaining standardized plans. The DC Department of Insurance, Securities and Banking (DISB) has completed some technical edits in parts of the insurance code, but HBX code has not yet been conformed. I note that this would not negate major impacts of a federal repeal which the District cannot save such as the premium tax credits or Medicaid expansion.
2. Second, make amendments to the HBX conflict of interest provisions to be consistent with provisions of the subsequently enacted Comprehensive Code of Conduct of the District of Columbia Establishment and BEGA Amendment Act and implementing regulations. SAB discussed some examples such as:

- HBX prohibits sources of income aggregating \$250 or more in 12 months period
 - BEGA prohibits gifts over \$10 per occasion or \$20 in one calendar year
 - HBX uses a standard of “foreseeable material financial effect” on individual or “immediate family” for assessing financial conflict of interest
 - BEGA applies “direct and predictable effect” on “persons closely affiliated with the employee” for assessing financial conflict of interest
3. Third, the committee discussed edits to provide for permanent independent procurement authority. HBX was provided independent procurement authority twice previously by the Council each time for five years. Consistency and stability are important in our ability to quickly respond to unexpected changes in the ACA and work with state partners, particularly on the IT side. Permanent independent procurement authority helps provide that consistency and stability.

The Ad Hoc Executive Board Committee on HBX Legislation recommends these unanimous SAB recommendations for passage by the full Executive Board.

b. Consumer Checkbook Decision Support Tools Contract – Mila Kofman, Executive Director

Ms. Kofman noted that Dr. Aaron had provided details in his Finance Committee report and she would not repeat them. Consumer Checkbook provides the functionality for anonymous shopping on DC Health Link. It also provides functionality for figuring out which drugs are covered under which plans, and which doctors are in which plan. We are planning to enhance the functionality that will allow consumers to pick their primary care physician as they sign up for coverage. Some plans require customers to choose a primary care provider before the plan pays for services, so this functionality will be quite useful.

The contract amounts are not to exceed:

Base Year (10/1/19 through 9/30/20)	\$697,000.00
Option Year 1 (10/1/20 through 9/30/21)	\$650,900.00
Option Year 2 (10/1/21 through 9/30/22)	\$661,800.00
Option Year 3 (10/1/22 through 9/30/23)	\$652,700.00
Option Year 4 (10/1/23 through 9/30/24)	\$653,600.00

In prior years we paid more; we have been negotiating each year to reduce our costs. Mr. Pitts noted that previously the amount had been greater than \$800,000.

Dr. Aaron asked if we knew how many customers use these tools. Debbie Curtis, HBX staff, said she would provide those statistics. Ms. Kofman noted that on the SHOP side, we have had the ability to give a more seamless process for employees to pick a plan that is good for them.

VIII. Public Comment

No public comment was proffered.

IX. Votes

a. DC Health Benefit Exchange Clean Up Legislation

It was moved and seconded to approve the cleanup legislation as set forth by Ms. Watkins above. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes.

b. Consumer Checkbook Contract

It was moved and seconded to approve the Consumer Checkbook Contract as set forth by Ms. Kofman above. The motion carried unanimously, with Dr. Aaron, Dr. Ku, Ms. Lewis, Mr. Pitts, and Ms. Watkins voting yes.

X. Closing Remarks and adjourn, *Diane Lewis, Chair*

Ms. Kofman said she had forgotten to report on one new data piece for tracking. She said it is important to start documenting entire individual market. We can see how long people are in the individual market; 18 months is the average length of enrollment in that market. Two hundred sixty-five customers have been in that market since the beginning. About one-third of customers were insured, left, and came back. We also want to look annually on how many were serviced; total number of enrollments, and similar data. These data points have been added to the enrollment [data](#) we supply for each Board meeting.

Mr. Pitts asked can you track those who moved their coverage up or down? Ms. Kofman replied yes and that we can also track SHOP to Individual and the other way.

The meeting adjourned at 6:43 p.m.